

APPENDIX C

Federal Energy Emergency Policy and Actions

This appendix identifies Federal Agencies and their response during an emergency as well as policies relating to energy commodities.

U.S. DEPARTMENT OF ENERGY

DOE's energy emergency support responsibilities and capabilities are distributed among several offices within the Department. DOE sets forth the missions of the key offices as follows:

Office of Policy: This Office is the principal advisor to the Secretary, Deputy Secretary, and Under Secretary on energy and technology policy issues, including the environmental consequences of energy use. This Office has primary responsibility for the formulation and development of national energy policy and for the conduct of policy analyses. It analyzes, develops, and coordinates departmental science and technology policy, environmental policy including global change policy, and economic policy. It is also responsible for advising the Department's senior management on issues related to the Department's environmental security and energy emergency policies.

Office of Electricity Delivery and Energy Reliability (OE): This Office operates DOE's Emergency Management System, Headquarters Emergency Operations Center (Forrestal Building), the Technical Support Center (Germantown, Maryland) and ensures integration and compatibility of all Departmental emergency operations facilities. Office of Energy ensures integration and compatibility of all Departmental emergency operations facilities. In order to meet its national security requirements and responsibilities contained in the Federal Response Plan, DOE has established mandatory reporting requirements for electric power system incidents or possible incidents. Such incidents are to be reported to the Department through its EOC on a timely basis.

The Office of Energy is also responsible for Critical Infrastructure Protection. It manages Departmental activities that support DOE's role as lead agency for Government interaction with the nation's energy sectors regarding critical infrastructure protection. In this role, Office of Energy develops and manages the critical infrastructure protection R&D program, and leads and coordinates Departmental efforts to work with industry, state and local governments and national and international entities in accordance with Presidential Decision Directive 63 (Policy on Critical Infrastructure Protection). This Directive calls for a series of actions that are designed to defend our critical infrastructures from various threats. The Directive also identifies lead federal agencies for each critical infrastructure in the U.S.

Energy Information Administration (EIA): EIA was created by Congress in 1977. It is a statistical agency of the U.S. Department of Energy that provides policy-independent data, forecasts, and analyses to promote sound policy making, efficient markets, and public understanding regarding energy and its interaction with the economy and the environment. EIA distributes four types of information products: energy data, analyses, forecasts, and descriptive information about its products. Many of the products, such as the Petroleum Supply Monthly, deal with specific industries. Of particular value to a broad range of customers are products that contain data on all fuel types presented in an integrated manner.

Some key releases of integrated information are the Monthly Energy Review, the Annual Energy Review, the Short-Term Energy Outlook, and the Annual Energy Outlook.

Most of the energy data are collected by EIA staff who design and send our statistical surveys to energy producers, users, transporters, and certain other businesses. Companies and households report directly to us. EIA also obtains energy data from other sources, such as trade associations and other government agencies.

EIA's analysis products are technical reports and articles that analyze issues about energy including economics, technology, energy production, prices, distribution, storage, consumption, and environmental effects. The Administration's forecasts cover all energy types, and include forecasts of supply, consumption, prices, and other important factors. There is a short-term forecast that goes out 6 to 8 quarters in the future, and a midterm forecast that goes out 20 years. Some of EIA's forecasting models are available on their Web site at <http://www.eia.doe.gov>.

Other EIA products are descriptions of information products that include directories of survey forms, lists of publications, electronic products and models, a guide to energy education resources, and complete lists of energy data contacts to call who have answers to energy questions.

Additional Activities: The following actions are taken in an emergency that requires activation of the Federal Response Plan and ESF-12.

- DOE Headquarters will establish the Headquarters Emergency Management Team (EMT) and assign personnel to temporary duty at the Federal Emergency Management (FEMA) Headquarters, Regional Operations Center, and Disaster Field Office as needed;
- The ESF-12 priority will be to save lives, protect property, and assist other ESFs by aiding in the restoration of damaged energy systems; and
- Within 24 hours of implementation of the Federal Response Plan or upon instruction from FEMA, DOE Headquarters will start submitting situation reports to FEMA Headquarters.

FEDERAL EMERGENCY MANAGEMENT AGENCY AND THE FEDERAL RESPONSE PLAN

FEMA Role and Responsibility: Under the Stafford Act and Executive Orders 12148, Federal Emergency Management, and 12656, Assignment of Emergency Preparedness Responsibilities, the Federal Emergency Management Agency has been delegated primary responsibility for coordinating Federal emergency preparedness, planning, management, and disaster assistance functions. FEMA also has been delegated responsibility for establishing federal disaster assistance policy.

Federal Response Plan: FEMA has the lead in developing and maintaining the Federal Response Plan which describes the structure for organizing, coordinating, and mobilizing federal resources to augment state and local efforts under the Stafford Act and its implementing regulations that appear in 44 CFR 206. The NRP also may be used in conjunction with federal agency emergency operations plans developed under other statutory authorities as well as memorandums of understanding (MOU) among various federal agencies. The NRP is implemented through regional supplements developed by FEMA, and the regional offices of other federal agencies, that describe specific actions, operating locations, and relationships to address the unique needs of the region and states. From time to time, operations supplements to the NRP may be issued to address special events that merit advanced planning, such as the Olympics or Presidential inaugurations.

Organization of the NRP: The NRP consists of six sections, two of which are the Basic Plan and Emergency Support Function Annexes. The Basic Plan presents the policies and concept of operations that guide how the federal government will assist disaster-stricken state and local governments. It also summarizes federal planning assumptions, response and recovery actions, and responsibilities. Separate Emergency Support Function Annexes describe the mission, policies, concept of operations, and responsibilities of the primary and support agencies involved in the implementation of key response functions that supplement state and local activities. Energy is ESF-12.

State Assistance: Under the Stafford Act, a Governor may request the President to declare a major disaster or an emergency if an event is beyond the combined response capabilities of a state and affected local governments. Based upon the findings of a joint Federal-State-local Preliminary Damage Assessment (PDA) indicating the damages are sufficient to warrant assistance under the Act, the President may grant a major disaster or emergency declaration. No direct Federal assistance is authorized prior to a Presidential declaration. However, FEMA can use limited pre-declaration authorities to move Initial Response Resources (critical goods typically needed in the immediate aftermath of a disaster, e.g., food, water, emergency generators) and emergency teams closer to potentially affected areas. FEMA also can activate essential command and control structures to lessen or avert the effects of a disaster and to improve the timeliness of disaster operations.

Additional Assistance: Additionally, when an incident poses a threat to life and property that cannot be effectively dealt with by state or local governments, FEMA may request the Department of Defense (DOD) to utilize its resources prior to a declaration to perform any emergency work “essential for the preservation of life and property” under the Stafford Act. Following a declaration, the President may direct any federal agency to use its authorities and resources in support of state and local assistance efforts to the extent that provision of the support does not conflict with other agency emergency missions. A state must commit to pay a share of the cost to receive certain types of federal assistance under the Stafford Act. In extraordinary cases, the President may choose to adjust the cost share or waive it for a specified time period. The Presidential declaration notes any cost-share waiver, and a FEMA-State Agreement is signed further stipulating the division of costs among federal, state, and local governments and other conditions for receiving assistance.

Energy Consequences: A natural disaster, such as an earthquake, may produce energy consequences such as pipeline ruptures disrupting petroleum transmission and natural gas or transmission tower collapses interrupting gas flow and electric transmission. Conversely, failure of a primary transmission line may result in an energy emergency in its own right.

ELECTRICITY

Federal Power Act(16U.S.C.§791aetseq.): Section 202(c) permits DOE to order temporary interconnections of facilities and the generation and transmission of electric energy in an emergency situation. (16 U.S.C. §824a(c)). Sections 210 and 211 authorize the Federal Energy Regulatory Commission to order interconnections and wheeling transmission services, if such actions are in the public interest and would promote efficient use of the facilities in are in the public interest and would promote efficient use of the facilities in question, conserve energy, or improve system reliability. (16 U.S.C. §§824i and 824j)

Emergency Electric Power Interconnections: The Secretary of Energy has authority in an emergency to order temporary interconnections of facilities and the generation and delivery of electric power through the Federal Power Act, Section 202(c). This authority may be utilized upon a petition from a party requesting the emergency action or may be initiated by the Government on its own initiative. Adverse economic conditions are not considered to be an emergency justifying the use of the statute.

Historical Use: The Federal Power Commission used Section 202(c) of the Federal Power Act extensively during the Korean War to direct the delivery of electric power to various aluminum smelters in the Pacific Northwest to ensure that adequate aluminum was available for the war effort. In the early 1970s the FPC also used this authority to order the connection of the municipal electric system in Cleveland to the investor-owned Cleveland Electric Illuminating Company system. DOE has received several petitions from parties seeking issuance of Section 202(c) orders, but has denied them following determinations that an emergency did not exist.

Economic Charges: Implementing regulations (10 CFR 205.370 et seq.) specify that the involved parties must attempt to resolve the economic charges associated with the interconnection and/or delivery of electric power. If no resolution can be reached, the matter would be referred by DOE to the Federal Energy Regulatory Commission for hearings and resolution. This authority probably has limited usefulness in light of ongoing restructuring of the electric power supply industry. An increasing number of independent generating supply entities, and energy supply brokers, are available to meet increased demand for electric power that cannot be met by utilities. Similarly, when a utility petitions DOE to order a transmission entity to deliver electric power over the bulk electric transmission system, the lead-time for permits and construction of new transmission lines limits the applicability of this authority to existing connections, which would already be operating at close to design capacity in an emergency. It is likely that physical limits to transmission, rather than refusal to cooperate, will limit power movements in emergency situations. This authority needs to be re-examined when the electric power industry restructuring is completed.

Electric Power Reliability: The Secretary of Energy has limited authority with regard to the reliability of the interstate electric power transmission system. Under the Federal Power Act, Section 202(a) and the Public Utilities Regulatory Policies Act, Section 209(b), DOE can define reliability regions and encourage interconnection and coordination within and between regions to gather information regarding reliability issues and to make recommendations regarding industry standards for reliability. These authorities are utilized whenever the Secretary requests a special study on electric power reliability issues.

Power System Emergency Reporting Procedures: The Department of Energy has authority to obtain current information regarding emergency situations on the electric supply systems in the United States. The Department of Energy Organization Act, Federal Power Act, 10 CFR Sections 205.350 - 205.353 give DOE the authority to establish mandatory reporting requirements for electric power system incidents or possible incidents. This reporting is required to meet national security requirements and other responsibilities contained in the NRP for emergencies. The DOE-417R Form was developed to standardize reporting procedures. Such incidents are to be reported via

telephone, fax, or e-mail to the DOE Emergency Operations Center (staffed 24 hours a day, 365 days a year) on a timely basis.

There are four types of incidents that should be reported to DOE:

- **Loss of Firm Load:** Based on their size, utilities must report activities that include load shedding actions resulting in the reduction of 100 megawatts or more of firm load or equipment failures/system operational actions that result in a continuous interruption for 3 hours or longer to over 50,000 customers.
- **System Voltage Reductions or Public Appeals: Utilities must report anticipated or actual system voltage reductions of 3 percent or greater for purposes of maintaining the continuity of the bulk electric power supply or any general public appeal to reduce the use of electricity for purposes of maintaining the continuity of the bulk electric power system.**
- **Bulk Power System Operational Actions:** Utilities report any incidents that degrade the reliability of the bulk power service such as actual or suspected intentional acts of physical sabotage (not vandalism) or terrorism to provider systems. They must also report an abnormal bulk electric power system operating condition that forces curtailment of scheduled electric power flows or limits emergency response capabilities.
- **Fuel Supply Emergencies:** Utilities report existing or anticipated fuel supply (or water supply for hydro units) emergency situations at electric power generating stations that could threaten continuity of the bulk electric power supply system.

Allocating Coal Shipments: Coal is used primarily to generate electric power. The President has authority to allocate coal (and require the transportation of coal) for the use of any power plant or major fuel-burning installation during an energy emergency under the Power plant and Industrial Fuel Use Act, Section 404(a). This allocation would take place upon declaration of a “severe energy supply interruption” as defined in the Energy Policy and Conservation Act, or a published finding that a national or regional fuel supply shortage exists. Section 404(e) precludes the President from delegating the authority to issue these coal allocation information orders, but DOE may be requested to provide about the energy emergency or to take other necessary action in the implementation of such a Presidential Order. To date, these authorities have never been used.

NATURAL GAS

Natural Gas Act (15U.S.C.§717etseq.): Section 3 grants DOE the authority, upon application, to authorize imports and exports of natural gas. (15 U.S.C. §717b) Section 3 requires DOE to approve, without modification or delay, applications to import liquefied natural gas and applications to import natural gas from countries with which there is in effect a free trade agreement requiring national treatment for trade in natural gas. Section 7(c)(1)(B) authorizes the Federal Energy Regulatory Commission, in times of emergency, and without notice or hearing, to issue a temporary certificate of public convenience and necessity for the transportation or sale of natural gas to assure maintenance of adequate service or to serve particular customers. (15 U.S.C. §717f(c)(1)(B)).

Natural Gas Policy Act of 1978 (15U.S.C. §3301 et seq.): DOE has delegated authority (E.O. 12235) under sections 302 and 303, respectively, to “authorize purchases of natural gas” and to “allocate supplies of natural gas” in interstate commerce upon a finding by the President under section 301 of an existing or imminent “severe natural gas shortage, endangering the supply of natural gas for high-priority uses.” (15U.S.C. §§3361-3363)

The potential federal responses to natural gas emergencies are as follows:

Natural Gas Imports and Exports: Under the Natural Gas Act, Section 3, DOE can authorize imports and exports of natural gas to and from NAFTA partners Canada and Mexico.

Natural Gas Emergency Allocation Authority: DOE can order any interstate pipeline or local distribution company served by an Interstate pipeline to allocate natural gas in order to assist in meeting the needs of high priority consumers during a natural gas emergency under the Natural Gas Policy Act, Title III, Sections 301 to 303 (E.O. 12235).

- **Emergency Purchase and Allocation:** DOE has been delegated the emergency purchase and allocation authority of the President (E.O. 12235) under Title III, Sections 301 to 303 of the Natural Gas Policy Act. To use this authority, the President must first declare a natural gas supply emergency for high-priority users under Section 301. Under the provisions of Section 302, the Secretary may authorize emergency purchases of natural gas by any interstate pipeline or local distribution company served by an interstate pipeline. The Secretary may also order pipelines to transport gas or construct emergency facilities. Section 303 allows the Secretary to allocate supplies of natural gas.
- **Implications of Industry Restructuring:** The restructuring of the natural gas industry following Federal Energy Regulatory Commission Order 636 in 1992 has fundamentally changed the transmission and distribution networks. Interstate natural gas pipelines are common carriers and must provide customers equal access to pipeline space. Consequently, some of these emergency provisions may no longer be necessary. The emergency authorities may need to be rewritten to reflect current realities in a natural gas industry that has been significantly restructured since the Natural Gas Policy Act was written in 1978.

Prohibit Burning of Oil and Natural Gas: The President has authority to prohibit any power plant or major fuel-burning installation from using natural gas or petroleum as a primary fuel during an emergency. The Public Utilities Regulatory Policies Act of 1978, Section 607 and Power plant and Industrial Fuel Use Act, Section 404(b) provides this authority. To date, these authorities have never been used.

Pipeline Operations: Under the authority of the Natural Gas Pipeline Safety Act and Hazardous Liquids Pipeline Safety Act, the Office of Pipeline Safety governs the operation of liquefied natural gas plants and gas and hazardous liquids pipelines in interstate and intrastate operations to establish general parameters for the safety. OPS may issue waivers of its regulations for good cause (to permit pipelines to increase operating pressure or to address a particular safety issue, for instance). OPS looks to DOE staff to provide relevant energy supply, distribution and infrastructure interdependency impact assessments for use by OPS in determining whether to issue such waivers.

History: In the period following a break in the Colonial Pipeline Company's pipeline system, DOE (Office of Emergency Management and EIA Office of Oil and Gas) staff worked closely with the OPS to provide petroleum product supply and distribution assessments to determine the appropriate operational requirements for restoration of safe service.

PETROLEUM

Energy Policy and Conservation Act (EPCA)(42U.S.C.§6201etseq.)

- Section 103 provides broad authority, which has been delegated to the Department of Commerce (E.O. 11912), to limit exports of crude oil and refined petroleum products (as well as coal, natural gas, petrochemical feed stocks and energy-related materials and equipment). The Commerce Department has implemented this authority with respect to certain domestic crude oils and petroleum products refined from Naval Petroleum Reserve crude oil in its Export Administration Regulations at 15 CFR Part 75. (42 U.S.C. §6212)
- Sections 151-181 authorize DOE to establish and operate the Strategic Petroleum Reserve (SPR). Section 161(d)(1) authorizes the President to order draw down of the SPR upon a finding that draw down is required either by a "severe energy supply interruption" or obligations of the U.S. under the Agreement on an International Energy Program (IEP). Section 3(8) of the EPCA defines "severe energy supply interruption" as a national energy supply shortage which the President determines - is, or is likely to be, of significant scope and duration, and of an emergency nature; (B) may cause major adverse impact on national safety or the national economy; and results, or is likely to result, from (i) an interruption in the supply of imported petroleum products, (ii) an interruption in the supply of domestic petroleum products, or (iii) sabotage or an act of God. The Act also provides that in addition to the circumstances set forth in section 3(8), a "severe energy supply interruption shall be deemed to exist if the President determines that an emergency situation exists and there is a significant reduction in supply which is of significant scope and duration; a severe increase in the price of petroleum products has resulted from such emergency situation; and such price increase is likely to cause a major adverse impact on the national economy."
- (42 U.S.C. 6241 (d)(1)) Section 161(h) empowers the President to draw down the SPR despite the absence of a "severe energy supply disruption" or a need to meet U.S. obligations under the IEP, if the President finds that other circumstances exist that constitute, or are likely to become, "a domestic or international energy supply shortage of significant scope or duration" and the President determines that draw down would assist directly or significantly in preventing or reducing the adverse impact of such a shortage. However, there are several limitations on the use of this authority: the Reserve may not be drawn down for more than 30 million barrels or for longer than sixty days with respect to a single event, or if the Reserve would be reduced below the level of 500 million barrels. The Act gives the President authority to authorize the export of crude oil withdrawn from the SPR during a drawdown for refining or exchange outside the U.S., in connection with an arrangement for the delivery of refined petroleum products to the U.S. (42 U.S.C. §6241(i)) The Commerce Department has implemented this authority in its Export Administration Regulations at 15 CFR 754.
- Section 251 empowers the President to require U.S. oil companies to divert oil supplies to other International Energy Agency (IEA) member countries in

satisfaction of United States' allocation obligations when the IEA's emergency oil sharing system has been triggered. (42 U.S.C. §6271)

Petroleum supply disruptions can result in the following federal actions:

U.S. Lead for International Oil Emergency Response Activities: DOE is responsible for coordinating U.S. involvement in an International Energy Agency (IEA) response to an international oil supply emergency. The IEA, consisting of 23 member countries, was created following the 1973 oil crisis with the goal of developing and maintaining cooperative oil emergency response policies and programs. This authority comes from:

- Executive Order 11912
- Department of Energy Organization Act,
- Energy Policy and Conservation Act (Sections 251 to 254), and
- Agreement on an International Energy Program

International Energy Program: As a signatory to the 1974 Agreement on an International Energy Program (IEP), the U.S. is obligated to cooperate with its allies in the International Energy Agency (IEA) to respond to international oil supply emergencies. The IEA has two primary oil emergency response mechanisms that it can employ. The IEP contains an emergency oil allocation program known as the Emergency Sharing System, under which each member country is responsible for helping share the burden of an oil supply shortfall. A second measure developed by the IEA in 1984 is known as the Coordinated Emergency Response Measure (CERM), which utilizes a more market-oriented approach involving stock draw and complementary measures, such as demand restraint. DOE leads U.S. participation in an IEA oil emergency response action. The Department develops plans for U.S. emergency response actions, develops the U.S. position on an appropriate international response, and makes recommendations for action to the President. Close coordination is maintained with the Department of State and other interested Federal agencies.

Strategic Petroleum Reserve: The DOE is authorized to create and maintain a Strategic Petroleum Reserve and the President is authorized to order a drawdown of the Reserve in emergency circumstances as defined in the Energy Policy and Conservation Act, Sections 151 to 181.

- **Drawdown:** DOE is authorized to create and maintain the SPR and implementing the draw down and distribution of the reserve upon a Presidential finding of a “severe energy supply interruption” or the need to fulfill International Energy Agency obligations. The President can also order a drawdown if he finds that other circumstances exist that constitute a “domestic or international energy supply shortage of significant scope or duration.” Under this authority, the SPR can be drawn down by up to 30 million barrels a day for up to 60 days, but not fall below 500 million barrels. Purchasers would be delivered oils within approximately 16 days from the day of the decision. However, it could take several weeks for purchasers to transport oil from the SPR, have it refined and then distributed to consumers. In November 2001, the President ordered that the SPR be filled to its 700 million barrel capacity.
- **History:** The emergency drawdown authority was used in January 1991 during the Gulf War when 17 million barrels of SPR oil were sold pursuant to

the IEA's Gulf War Contingency Plan of January 11, 1991. In addition, DOE has had three Congressionally-mandated sales of SPR oil for deficit reduction purposes and operational expenses and has conducted two test sales with industry to ensure SPR readiness. In September of 2000, the President directed that 30 million barrels of SPR be swapped to bolster oil supplies and enhance low inventories of winter heating oil. Companies that obtained the oil were required to return the oil plus an additional bonus amount to the SPR by the fall of 2001.

- **Jones Act and the SPR:** In the event of a drawdown of the SPR, the volume of crude oil to be moved would be significantly greater than the capacity of the available U.S. flag crude oil tanker fleet that the Jones Act requires for transport. While procedures exist to expedite the waiver process on a case-by-case basis, a general waiver of the Jones Act, such as directed by the President in his finding for the 1991 SPR drawdown, is essential to assure the rapid and orderly sale and distribution of SPR oil.

LIMITING EXPORTS OF ENERGY PRODUCTS

The Department of Commerce has broad authority to limit exports of energy supplies, including coal, crude oil, petroleum products, natural gas, or petrochemical feed stocks under the Energy Policy and Conservation Act, Section 103. However, such actions could have implications for U.S. international trade obligations under the General Agreement on Tariffs and Trade (GATT) and North American Free Trade Agreement (NAFTA) and are seldom used. DOC may seek advice on energy supply situations from DOE when considering this option.

- **Export Administration Regulations:** DOC has implemented this authority in its Export Administration Regulations in the past. Exports of refined products do not require a license (with the exception of product refined from Naval Petroleum Reserves crude oil). Exports of certain domestic crude oils (Naval Petroleum Reserves crude oil, crude oil subject to a Mineral Leasing Act right of way, and Outer Continental Shelf Lands Act oil) remain subject to restrictions in different statutes, including Energy Policy and Conservation Act, Section 103, and require an export license. Section 103 has never been used to re-impose export controls on crude oil or refined petroleum products.
- **Priority for Domestic Energy Supplies:** The DOE has delegated authority from the Department of Commerce (DOC) under the Defense Production Act of 1950, Section 101(c) to assign priority ratings to contracts for materials, equipment, or services for projects deemed necessary to "maximize domestic energy supplies" or enter the marketplace to allocate the same. Most often these contracts are essential to exploration, production, refining, transportation, or conservation of energy supplies, or construction and maintenance of energy facilities. Impositions of priority ratings on contracts legally require the contractor to perform the contract on a priority basis. Such contractors receive DPA "breach of contract protection" from their existing customers.
- **Production Act (DPA) Contract Eligibility:** DOE must determine whether a contract(s) is eligible and supplies of materials or equipment are critical and essential to the project. DOC must determine whether the supplies for which priority assistance has been requested are scarce and whether the project reasonably can be accomplished without them. Section 101(c) is also one of the permanent provisions of the DPA that never expires should the Congress allow the DPA to lapse.
 - a. **History:** This authority was used in the 1970s, and again in the 1980's. In the early

1990s, it was also used to facilitate the development of the Alaskan North Slope oil fields and was considered for use during the Persian Gulf War to enhance foreign oil production. In limited circumstances, Section 101(c) could be used to obtain equipment needed to repair damaged production facilities or to expedite supply of fuel oil to electric utilities.

- b. Supply from Foreign Projects:** Increasing energy supplies from foreign projects can increase domestic energy supplies. During emergencies, DOE may want to increase foreign oil production. It can do so through a draft interim final rule. This draft rule would become effective immediately upon issuance through a waiver in the DOE Organization Act.

Directed Energy Supplies Under the Defense Production Act: The Secretary of Energy, under the Defense Production Act of 1950, Section 101(a), can require suppliers to accept contracts or orders at their normal market prices, on a priority basis, for energy supplies that are deemed “necessary or appropriate to promote the national defense.” The Secretary can also impose priority ratings on existing contracts, requiring suppliers to meet priority defense requirements relative to other customers or simply issue allocation orders to suppliers.

- **Application to DOD Contractors:** The Secretary’s broad energy emergency authority applies to the Defense Department, Defense Department contractors (such as commercial airlines), and other federal agencies with national security or defense-related responsibilities. The Defense Production Act provides complying suppliers with breach of contract protection. This authority could be used to require acceptance of and priority performance under contracts relating to the production, delivery, or refining of petroleum products to meet national defense energy needs.
- **Transportation of Supply:** DPA authority could also be used to facilitate transportation of energy supplies during an emergency by requiring pipelines, marine terminals, and other facilities to perform transportation contracts to promote national defense. However, the authority to control the general distribution of petroleum supplies in the “civilian market” cannot be used until the findings are made that supplies are “scarce and critical” and defense needs cannot be met without causing dislocations that will create appreciable hardship (Section 101(b)).

OTHER FEDERAL AUTHORITIES

Government Emergency Telecommunications: DOE sponsors energy industry requests for priority access through the interstate and intrastate telecommunication switching networks. Refer to the Federal Communications Act of 1934, Presidential Executive Order 12472, and 47 CFR Part 201.

- **National Communications System:** The National Communications System (NCS) has established a National Security and Emergency Preparedness (NSEP) program called the Government Emergency Telecommunications Service (GETS) to facilitate emergency communications. GETS provides priority access through the computer systems controlling the Local Exchange Carrier (LEC) and the public switching networks that route intrastate and interstate calls. GETS provides the legal ability for telecommunications providers to give preference in the routing of telecommunications to NSEP users.
- **Delegated Authority:** NCS has delegated to DOE the authority to issue GETS personal identification numbers (PINs) to the energy industry so that their NSEP telecommunications can obtain priority access to telecommunications routing.

State Energy Emergency Assurance Coordination: DOE and NASEO have agreed that DOE will develop, maintain, and distribute a contact list of state and federal individuals responsible for energy market assessment and energy emergency responses. The states will participate in the effort by providing timely assessments of energy markets to DOE and other states in the event of an energy supply disruption. Refer to the Department of Energy Organization Act, Section 205 and Federal Energy Administration Act of 1974, Sections 51 to 59.

- **Electronic Communications Network:** This critical electronic communications network of DOE officials, state emergency officials, state energy offices, and local emergency management officials provides a mechanism for the rapid dissemination and sharing of information on energy supplies, distributor and market assessments. DOE provides states an aggregated regional assessment of the effects of a market disruption when two or more states are affected. The assessment will draw upon information gathered by states, as well as other information, data, or analysis available to DOE. In support of this effort, each state identified one or more Energy Emergency Assurance Coordinators from different agencies throughout the state.

Low Income Home Energy Assistance Program (LIHEAP): The Department of Health and Human Services (HHS) can make the Low Income Home Energy Assistance Program (LIHEAP) emergency contingency funds available to assist eligible low income households meet their home heating and/or cooling needs arising from a natural disaster or other emergency such as extremely high energy prices. DOE may advise HHS on the fuel supply situation for such emergency funding. This authority is granted by the Community Opportunities, Accountability and Training and Educational Services Act of 1998, Title III, Sec 301-309 and the Low Income Home Energy Assistance Act of 1981.

- **Distribution of Funds:** High heating oil and propane prices have justified distributing emergency discretionary funds in the past to states based on their use of these fuels or other variables that reflect state needs.
- **Block Grants:** In addition to the availability of discretionary emergency funds, HHS also annually awards energy assistance block grants to the 50 states, District of Columbia, eligible Indian tribes/tribal organizations and insular territory areas, who then make payments directly to eligible households, or on behalf of such households, to help meet the cost of home energy. Although funded by the Federal Government, the HHS LIHEAP program is operated by each grantee.

Federal Energy Management Program (FEMP): In a severe emergency, the President may order increased conservation in federal facilities and operations, including the federal vehicle fleet. FEMP helps federal agencies reach their energy savings goals by aggressively raising awareness of energy efficiency activities and making it easier for agencies and utilities to save energy and money. The General Services Administration (GSA) coordinates the notification and distribution of the President's request. Refer to the Energy Policy Act of 1992 (EPA Act) and the Energy Emergency Conservation Act of 1979, Section 211(c).

- **Conservation by Federal Agencies:** Federal agencies spend approximately \$4.3 billion annually on utilities and are required by Executive Order 13123 to reduce their energy consumption by 20 percent from 1985 levels by 2010. FEMP energy savings performance contracts, utility incentives programs, and other creative financing mechanisms help federal agencies and utilities reach their energy and budget goals. FEMP has a Federal Utility Partnership Working Group to develop communications

between federal agencies and utilities. Utilities are moving from rebates to customized financing programs and value-added services such as energy audits, design assistance, load management, maintenance, and power quality to federal agencies.

- **Caveat Concerning Federal Closures:** At times it may be counterproductive to order the closure of federal office buildings to save energy. Federal staff could actually increase total energy demand in peak periods by increased residential consumption. Timing and magnitude of all emergency building closures needs to be weighed carefully.

Fuel Switching Public Utilities Regulatory Policies Act of 1978 (codified in 16 U.S.C. § 2601 et seq. and 15 U.S.C. § 717z)

- DOE has delegated authority (E.O. 12235) under Section 607, following the President's finding of a "severe natural gas shortage endangering the supply of natural gas for high-priority uses," to prohibit the burning of natural gas by any electric power plant or major fuel-burning installation. Required emergency finding identical to that in the Natural Gas Policy Act. (15 U.S.C. 717z) Powerplant and Industrial Fuel Use Act (42 U.S.C. § 8301 et seq.)
- Section 404(a) grants the President authority to allocate coal (and to require the transportation thereof) for the use of any powerplant or major fuel-burning installation. (42 U.S.C. § 8374(a)) Exercise of this authority requires a Presidential finding of a severe energy supply interruption, as defined in Section 3(8) of Energy Policy and Conservation Act (EPCA), set out above. Section 404(e) stipulates that the President may not delegate his authority to issue allocation orders under this authority.
- Section 404(b) grants the President authority to prohibit any powerplant or major fuel-burning installation from using natural gas or petroleum, or both as a primary energy source. (42 U.S.C. § 8374 (b)) Exercise of this authority requires a Presidential finding of a severe energy supply interruption, as defined in Section 3(8) of EPCA, set out above. Section 404(e) stipulates that the President may not delegate his authority under this provision.

Facilitating the Transportation of Energy Products ICC Termination Act of 1995 (Pub.L.No.104-88, 109 Stat.803)

- Authorizes the Surface Transportation Board, Department of Transportation, to issue priority orders during an emergency situation for rail movement of commodities including petroleum. (49 U.S.C. § 11123)
- Implementing regulations (10 CFR 205.370 et seq.) specify that the involved parties must attempt to resolve the economic charges associated with the interconnection and/or delivery of electric power. If no resolution can be reached, the matter would be referred by DOE to the Federal Energy Regulatory Commission for hearings and resolution. Regulations of the Department of Transportation, Federal Highway Administration, provide in 49 C.F.R. 390.23 for waiver of Federal motor carrier safety regulations in Parts 390 to 399 for motor carriers or drivers operating commercial motor vehicles to provide emergency relief during a regional or local emergency declared by the President, Governor of a State, or the Regional Director of Motor Carriers. An emergency is defined to include natural disasters, explosions, blackouts or other occurrences, natural or man-made, which interrupt the delivery of essential services such as, electricity, medical care, sewer, water, telecommunications and telecommunications transmission or essential supplies such as food and fuel, or otherwise immediately threaten human life or public welfare. For example, the waivers may exempt motor carriers and drivers

from limits on on-duty hours when providing direct assistance in such emergencies and provides exemptions from inspections, record keeping, hazardous materials, and other requirements. Magnuson Act (50 U.S.C. § 191 et seq.).

- Authorizes the Secretary of Transportation to issue regulations governing the movement of any vessel within the U.S. territorial waters, upon a Presidential declaration of a national emergency by reasons of actual or threatened war, insurrection or invasion, or disturbance or threatened disturbance of the international relations of the United States. (50 U.S.C. § 191) Ports and Waterways Safety Act (33 U.S.C. § 1221 et seq.) Authorizes the Secretary of Transportation to establish vessel traffic systems for ports, harbors and other navigable waters and to control vessel traffic in areas determined to be hazardous (e.g. due to conditions of reduced visibility, adverse weather, vessel congestion, etc.). (33 U.S.C. § 1223).
- Public Law No. 81-891, 64 Stat. 1120 (“Jones Act” waiver) Directs the Secretary of the Treasury to waive the provisions of section 27 of the Merchant Marine Act of 1920 (“Jones Act”), which require the use of vessels documented under 46 U.S.C. § 12106 (i.e. U.S.-flag, U.S.-built, and U.S.-crewed vessels) in coastwise trade, “upon the request of the Secretary of Defense to the extent deemed necessary in the interest of the national defense by the Secretary of Defense.” In addition, Public Law No. 81-891 authorizes the Secretary of the Treasury to waive compliance with the Jones Act either upon his own initiative or upon the written recommendation of the head of another agency whenever the Secretary “deems that such action is necessary in the interest of the national defense.”

ENVIRONMENTAL WAIVERS

Clean Air Act (42 U.S.C. § 7401 et seq): Section 110(f) of the Clean Air permits a State Governor to issue an emergency temporary suspension of any part of a State Implementation Plan (“SIP”) (as well as a temporary waiver of penalties for “excess” SO_x or NO_x emissions) in accordance with the following: (1) the owner/operator of a fuel burning source petitions the State for relief; (2) the Governor gives notice and opportunity for public hearing on the petition; (3) the Governor finds that an emergency exists in the vicinity of the source involving high levels of unemployment or loss of necessary energy supplies for residential dwellings and that the unemployment or loss can be totally or partially alleviated by an emergency suspension of SIP requirements applicable to the petitioning source; (4) the President, in response to the Governor’s request, declares a national or regional emergency exists of such severity that a temporary SIP suspension may be necessary and other means of responding to the energy emergency may be inadequate; and (5) the Governor issues an emergency suspension to the source.

Environmental Protection Agency regulations (40 C.F.R. 80.73) permit EPA to grant an exemption from the Clean Air Act Section 211(k)(1) requirement mandating the sale of reformulated motor gasoline in nine large U.S. cities (in order to reduce emissions of ozone-forming substances and toxic substances) in “appropriate extreme and unusual circumstances (e.g. natural disaster or Act of God)” if a refiner, importer, or blender satisfies the following five criteria:

- a. Nonconforming gasoline is necessary to meet projected supply shortfalls;
- b. Refiner/importer/blender could not have avoided noncompliance and is minimizing extent of noncompliance;
- c. Refiner/importer/blender can demonstrate how compliance will be expeditiously achieved;
- d. Refiner/importer/blender agrees to make up air quality detriment

- where practicable; and
- e. Refiner/importer/blender pays to U.S. Treasury an amount equal to the economic benefit of nonconformity less the amount expended in making up the air quality detriment.

NATIONAL DEFENSE AND NATIONAL SECURITY

Defense Production Act of 1950 (50U.S.C.App. §2061etseq.): The Secretary has delegated authority (E.O. 11790 and E.O. 12919) under section 101(a) to require performance on a priority basis of contracts for energy supplies that the Secretary deems “necessary or appropriate to promote the national defense,” and to allocate energy supplies “in such manner, upon such conditions and to such extent as [the Secretary] shall deem necessary or appropriate to promote the national defense.” This authority could be used, for example, to require acceptance of and priority performance under contracts relating to the production, delivery, or refining of petroleum products, to meet national defense energy needs of the Department of Defense and its contractors. It also could be used to facilitate petroleum transportation during an emergency, for example, by requiring pipelines, marine terminals, and other facilities to perform oil transport contracts necessary or appropriate to promote the national defense. (50 U.S.C. App. §2071(a)) Section 101(a) authority is not available to control the general distribution of material in the civilian market unless further findings required by Section 101(b) of the DPA are made, *i.e.* that the material is a “scarce and critical material essential to the national defense” and that defense needs cannot be met without causing dislocations in that market that will create “appreciable hardship.” (50 U.S.C. App. §2071(b))

Section 101(c) authorizes contract “priority ratings” and the allocation of equipment, material and services in order to maximize domestic energy supplies, if the Secretaries of Energy and Commerce, under E.O. 12919, make certain findings with respect to the need for the material, equipment or services for the exploration, production, refining, transportation, or conservation of energy supplies, or for the construction and maintenance of energy facilities. This authority could be used, for example, to assist oil companies or electric utility companies in obtaining equipment needed to repair damaged facilities, or to provide fuel oil to electric utilities. (50 U.S.C. app. §2071(c))

Section 708 provides a limited antitrust defense for industry participating in voluntary agreements “to help provide for the defense of the United States through the development of preparedness programs and the expansion of productive capacity and supply beyond levels needed to meet essential civilian demand in the United States.” In the event of widespread damage to energy production or delivery systems, this authority could be used to establish a voluntary agreement of service companies to coordinate the planning of the restoration of the facilities. (50 U.S.C. app. §2158)

The Secretary has delegated authority (E.O. 11790 and E.O. 12919) under Section 710 to train and employ persons from the private sector in order to facilitate planning for and responding to emergencies. (50 U.S.C. app. §2160)

NUCLEAR ENERGY

Atomic Energy Act of 1954 (42U.S.C. §2011etseq.): Authorizes the Nuclear

Regulatory Commission, upon the declaration by Congress of a state of war or national emergency, to suspend any licenses granted under the Act if such action is necessary for the common defense and security. (42 U.S.C. §2138).

INTERNATIONAL AUTHORITY

International Emergency Economic Powers Act (50U.S.C. §1701etseq.):

Authorizes the President to declare a national emergency to deal with a threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States. Upon declaration of a national emergency, the Act provides the President with plenary control over property that is subject to U.S. jurisdiction and in which any foreign country or national thereof has an interest. If a petroleum shortage is sufficiently severe to invoke a presidentially declared national emergency, the IEEPA could be used to control supplies of petroleum products in which foreign countries or foreign nationals have an “interest” (e.g. regulate exports of petroleum products owned or controlled by a U.S. company and in which a foreign national has contract right to acquire). (50 U.S.C. §§1701-1702).

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